

EXHIBIT 11

FILED UNDER SEAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC

Plaintiff,

vs.

Case No. 17-cv-00939-WHA

UBER TECHNOLOGIES, INC.;

OTTOMOTTO, LLC; OTTO

TRUCKING LLC,

Defendants.

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEO DEPOSITION OF BRIAN McCLENDON

Palo Alto, California

Tuesday, August 1, 2017

Volume I

REPORTED BY:

REBECCA L. ROMANO, RPR, CSR No. 12546

JOB NO. 2668964

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1 make things move faster. 10:46:53

2 Q. Is he -- did he indicate that he was not
3 satisfied with the speed upon which things were
4 moving while it was under your leadership?

5 A. Yes. 10:47:10

6 Q. Did he -- did Mr. Kalanick indicate to
7 you anything in particular that he thought should
8 have been done faster?

9 A. I don't remember.

10 Q. Did he communicate with -- was it 10:47:32
11 Mr. Kalanick had communicated to you that he was
12 going to take over?

13 A. Yes.

14 Q. Was that in a call or in an email,
15 meeting? 10:47:42

16 A. Initially, it was in a meeting.
17 The official -- the -- the official one where it
18 happened was in an email.

19 Q. Okay. What -- what do you recall him
20 saying in that -- in the -- the meeting? 10:47:56

21 A. I don't recall.

22 Q. Okay. And do you recall what -- this was
23 just an email from him to you or...

24 A. No, there was an email to the relevant
25 parties, John Bares, Jeff Holden, myself, at least, 10:48:10

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1 THE DEPONENT: I -- I believe so. 11:02:57

2 Q. (By Mr. Perlson) Did you express any
3 concerns within Uber regarding what Mr. Levandowski
4 was doing in terms of recruiting people?

5 MS. RAY: Objection. Form. 11:03:07

6 THE DEPONENT: I don't remember.

7 Q. (By Mr. Perlson) Do you recall being
8 concerned, yourself, as to what Mr. Levandowski was
9 doing in terms of recruiting people at Google?

10 MS. RAY: Objection. Form. 11:03:22

11 THE DEPONENT: I recall having some
12 concerns.

13 Q. (By Mr. Perlson) Okay. And what was
14 your concern?

15 A. How was he going to build a company and 11:03:33
16 get these people to go. And so he, I assume, had a
17 method for doing that, that he was comfortable
18 with.

19 Q. Okay. And why wouldn't it be that he was
20 going to be -- why wouldn't he be able to build a 11:03:49
21 company and get these people to come? Why were you
22 concerned that that was an issue?

23 A. I don't know what his nonsolicitation
24 agreement looked like, so I don't know.

25 Q. Did you have any concerns about his 11:04:05

1 Q. (By Mr. Perlson) Have -- other than 11:22:29
2 counsel, have you spoken with anyone at Uber
3 regarding any of the allegations in this case?

4 A. I would have to say the answer is
5 probably, yes, but I don't remember any specifics. 11:22:54

6 Q. Do you have any idea who you would have
7 spoken to?

8 A. No.

9 Q. The complaint wasn't that long ago. Is
10 there any particular reason why you're having a 11:23:07
11 hard time answering that question?

12 A. You know, when -- when the complaint came
13 out, it was a topic of discussion. I'm -- I
14 suspect I talked about it to somebody besides
15 counsel, but I truly don't remember who. 11:23:25

16 Q. Were people in -- on your team concerned
17 about the complaint after it was filed?

18 A. Yes.

19 Q. What -- what do you remember them saying,
20 in particular, about their concerns? 11:23:43

21 A. It feels like it's going to be a huge
22 distraction.

23 Q. Any other concerns?

24 A. AT -- ATG, you know, philosophy is
25 important, and it's going to distract and slow down 11:24:09

1 to the Otto acquisition were realistic? 11:29:40

2 A. I don't believe so.

3 Q. Did you provide any feedback in relation

4 to any of the financial terms of the Otto

5 acquisition? 11:29:52

6 A. I may have expressed an opinion to a

7 person, but not in any -- not where I was being

8 consulted and -- and giving feedback.

9 Q. Do you -- do you recall providing an

10 opinion in that regard? 11:30:09

11 A. I do. I do.

12 Q. And tell me what you recall.

13 A. I believe what I heard was that it was

14 [REDACTED]

15 and that seemed like an awful lot. 11:30:25

16 Q. Okay. And for -- that seemed like an

17 awful lot for what?

18 A. For any -- any acquisition.

19 Q. And did you -- when you heard that, who

20 did you express that opinion to? 11:30:45

21 A. I don't remember who I said it to.

22 Q. But you think you expressed it to

23 somebody; you just don't remember who it was?

24 A. Yes.

25 Q. But at that time the decision-making was 11:31:00

| | | |
|---|---------|----------|
| 1 | A. Yes. | 11:36:00 |
|---|---------|----------|

2 Q. The -- so why was it that you wanted
3 to -- to speak with Mr. Levandowski in
4 June of 2015?

5 A. I don't remember exactly why I said that, 11:36:18
6 but just catch up with him before I go. Because I
7 was, you know, leaving -- leaving Google.

8 Q. I see.

9 So this was shortly before you left?

| | | |
|----|----------|----------|
| 10 | A. Yeah. | 11:36:32 |
|----|----------|----------|

| | |
|----|------------|
| 11 | Q. Got it. |
|----|------------|

12 So what -- do you know what
13 Mr. Levandowski was referring to by "Lots of fun
14 things going on"?

| | | |
|----|----------------------|----------|
| 15 | A. I don't remember. | 11:36:45 |
|----|----------------------|----------|

16 Q. Okay. So did -- when -- when you -- when
17 you spoke in -- in June of 2015, to
18 Mr. Levandowski, did you discuss about the two of
19 you potentially working together again?

20 | A. I don't recall. 11:37:13

21 Q. Did he indicate an interest, at that
22 time, in going to Uber?

23 A. I don't recall.

24 Q. Do you recall anything about that

25 conversation other than Mr. Levandowski expressing 11:37:22

1 the list of things yet to do was a custom laser. 12:14:44
2 And so this was just a potential person who could
3 work on that.
4 Q. If you look further down there's -- it
5 says "Unfortunately another rumor is that he headed 12:15:10
6 exactly this (custom laser) for Google and did so
7 poorly that Salesky tried to fire him."
8 Do you see that?
9 A. Yes.
10 Q. Had you heard anything about that 12:15:24
11 separate from this email?
12 A. No. I do remember this email and I kind
13 of remember being surprised at both of -- I didn't
14 know either of those facts.
15 Q. Okay. And it says in the last sentence, 12:15:37
16 "I have not written him off, however-just lots of
17 warning signs."
18 Do you see that?
19 A. Yes.
20 Q. And did you agree that these were -- that 12:15:53
21 those were warning signs?
22 A. Yes.
23 Q. Did you do anything in -- in
24 August of 2015 in relation to those warning signs
25 in terms of investigating as to Mr. Levandowski? 12:16:04

1 A. I don't remember. 12:16:06

2 Q. The -- the -- if you look -- then there's
3 an email from yourself to Mr. Holden in
4 October of 2015, forwarding him the same email,
5 from August of 2015. 12:16:32

6 Do you recall why you were re-forwarding
7 that email at that time?

8 A. I don't recall.

9 (Exhibit 422 was marked for
10 identification by the court reporter and is 12:17:49
11 attached hereto.)

12 THE DEPONENT: Okay.

13 Q. (By Mr. Perlson) So this is an email
14 from yourself to Mr. Holden and Mr. Kalanick in --
15 August 17th, 2015, and the message is more -- "some 12:19:21
16 more gossip."

17 Do you recall why it is that you were
18 emailing them about this?

19 A. I mean, I'm deriving from the mentions
20 that this is probably when Alphabet was announced, 12:19:39
21 and I probably had a conversation with somebody at
22 Google about what that meant.

23 Q. If you look further down [REDACTED]

[REDACTED]

[REDACTED]

12:19:57

1 A. Yes. 12:51:44

2 Q. So -- and is the -- do you know what --
3 what the purpose of that meeting was?

4 A. I -- as stated, for them to get to know
5 each other. 12:51:57

6 Q. Okay. Fair enough.

7 The -- so do you know what -- what, if
8 anything, Mr. Kalanick knew about the discussions
9 with Mr. Levandowski at the time?

10 A. I don't remember specifics, but if you 12:52:17
11 look at the first line of the last email, which is
12 the top, apparently I had talked to him a few
13 times, including once where we went over deal
14 terms. So I think we had talked -- I had relayed
15 to him the supplier deal term discussions that we 12:52:32
16 were currently having.

17 Q. And there's an email from you saying "At
18 the moment just Travis and Anthony. As far as I
19 know, Lior won't be there. I can go if needed."

20 Do you know if -- if you went? 12:52:55

21 A. I don't remember. I might have.

22 Q. Do you recall getting a report of -- of
23 what happened at the meeting?

24 A. I don't recall.

25 Q. I guess I should say, do you recall what 12:53:21

1 happened at the meeting, if you went? 12:53:24

2 A. Apparently, not.

3 Q. Do you recall what Mr. Kalanick's
4 impression of Mr. Levandowski was when he -- when
5 he originally met him? 12:53:46

6 A. I -- I remember a description after the
7 fact that the first meeting, this -- if it's
8 this -- if this is truly the first meeting, that
9 that first meeting did not go particularly great.

10 And then it took a second meeting for 12:54:01
11 them to finally communicate well. But I don't
12 remember the details of what was said or why. So
13 I -- I must not have been at the meetings because I
14 was hearing about it thirdhand.

15 Q. And as of this time in -- in 12:54:17
16 December 20th, 2015, do you think that it's correct
17 to say that most of the discussion was focused on a
18 potential supplier arrangement?

19 A. Yes.

20 Q. And then after Mr. Kalanick got involved, 12:54:44
21 it then shifted towards an acquisition; is that
22 fair?

23 A. Broadly, yes.

24 Q. What did you do to prepare for your
25 deposition today? 12:55:12

1 remember this was the meeting that John somehow -- 01:42:20
2 John Bares was somehow able to attend the meeting.
3 So, yes, it did occur.
4 Q. Why was he somehow -- what do you mean
5 somehow? 01:42:30
6 A. Because he was actually planning to fly
7 out, and -- and the original schedule -- the
8 original plan for the meeting, he wouldn't have
9 been able to attend. But he did attend, as far as
10 I remember. 01:42:40
11 Q. Okay. Tell me what you remember about
12 what was discussed at that meeting.
13 A. I don't remember any details.
14 Q. You just remember it occurred --
15 A. Yes. 01:42:47
16 Q. -- and remembering because he had some
17 scheduling issues?
18 A. Yes.
19 Q. So do you recall what Mr. Kalanick
20 thought that the strategy should be at -- at that 01:43:01
21 point in time?
22 A. Not specifically, no.
23 Q. What about generally?
24 A. I think, generally, sometime during this
25 period, Travis eventually got on board with the 01:43:16

1 Q. If you look on the -- first of all, do 04:53:49
2 you have any knowledge of any of the sort of
3 specific technical details that are provided in
4 here regarding the lasers project?

5 A. No. I mean, I can read it and try to 04:54:10
6 figure out what it means. But I -- I didn't -- you
7 know, I don't remember any of these details.

8 And so I am not sure what you are asking.

9 Q. Well, I guess -- I mean, there -- there's
10 a fair amount of technical details about what was 04:54:31
11 going on at Otto, and -- but you -- did you roll up
12 your sleeves to look at that stuff?

13 A. I am not as smart as Scott and John. You
14 know, their analysis was good enough.

15 Q. Okay. If you look at -- there's an email 04:54:47
16 to you from Mr. Bares, I guess, on May 9th at
17 5:44 p.m. And it says, "Brian, so we are in a bit
18 of a touchy situation here."

19 And he's saying, "As you know, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

23 As of this time in May -- May 9th, 2016,
24 what -- was this before or after Mr. Kalanick took
25 you off the -- the autonomous vehicle work? 04:55:34

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█

06:09:57

11

Q. Had Uber started to try to build a custom

12

LiDAR as of December of 2015?

13

MS. RAY: Objection. Form.

14

THE DEPONENT: I can't remember exactly

15

when Scott's team started to experiment with custom

06:10:11

16

LiDAR.

17

Q. (By Mr. Perlson) Do you know how much

18

Uber had invested in LiDAR development as of

19

December 2015?

20

A. I don't remember.

06:10:25

21

Q. Do you know how many people, if any, Uber

22

had working on LiDAR development as of

23

December 2015?

24

A. Less than five.

25

Q. Do you know how much Uber was spending on

06:10:36

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